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Honorable Janet H. Deixler
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223

Re: Cases 00-C-0897, 00-C-0188

Dear Secretary Dreixler:

AT&T Communications of New York Inc. ("NY") respectfully submits these comments on the Compliance Plan dated December 10, 2001 proposed by Verizon to satisfy the Commission's October 30, 2001 Order Requiring Non-Discriminatory Provision of PIC Freeze Status Information and Clarifying Prior Order (the "Order"). Verizon contends that its proposal to use a modified version of the Xpress Electronic Access ("XEA") system will meet the Order's requirement that Verizon provide freeze information to unaffiliated interexchange carriers ("IXCs") on a parity basis. Verizon is wrong. The use of a modified XEA system as proposed by Verizon fails to meet the Order's requirements. For the reasons set forth below, the only plausible way to ensure true parity of access to PIC freeze information between Verizon long distance and its long distance competitors, is to require Verizon to give IXCs access to the same customer service records ("CSR") that it provides to its own service representatives when they are servicing customers seeking Verizon long distance service.

Background and Context:

For the past several years, interexchange carriers, including AT&T, MCI and Sprint, have claimed that Verizon has persistently abused its ability to discriminate in the administration of the PIC freeze process to advantage its own toll services and disadvantage its competitors. Over that period of time, AT&T and others have produced evidence that Verizon does in fact, consistently and intentionally, use this system for anticompetitive objectives. We have produced evidence that Verizon imposes PIC freezes on its own toll accounts without customer consent, disrupts three-way calls to lift PIC freezes and gives preferential treatment to customers seeking to come to Verizon long distance that have PIC freezes on their toll lines. Verizon has engaged in a trench warfare defense against these charges that denies wrongdoing, dismisses indisputable examples of gross misconduct as isolated anomalies, or attempts to justify patently discriminatory conduct as somehow permissible. The most recent skirmishes in this war have involved processes that allow long distance carriers (including Verizon long distance) to identify in advance (or in real time while on the phone with a customer) that a customer has a PIC freeze in place, so that the freeze can be lifted in a timely and efficient way.

On October 24, 2001, the Commission issued its Order Requiring Non-Discriminatory Provision of PIC Freeze Status Information and Clarifying Prior Order (Issued and Effective October 30, 2001) (“Order”). In the Order, the Commission found that Verizon had “failed to meet its burden to show that the proposed order directing Verizon to provide the information on a non-discriminatory basis should not issue.” Accordingly, the Commission directed that Verizon implement a program that would “afford carriers the most nearly equivalent access quickly.” Order at 3.

Verizon's so-called compliance plan is nothing of the kind. Instead of providing anything approaching equivalent access, Verizon continues to lay down a smoke screen of false and misleading information on both Verizon's own actual practices and on those imposed on its competitors, together with arguments to justify persistent discrimination into the future.

As we will demonstrate below, the only long-term solution to Verizon's persistent and calculated abuse of the PIC administration process is to remove Verizon as the administrator of that process. So long as Verizon operates as the gatekeeper for customers going to and coming from its long distance business, it will have the incentive to abuse that position to its own competitive advantage and the ability to do so. And, as the evidence in this case to date and the further evidence presented below demonstrate, where Verizon has the ability to discriminate against its competitors, it can be counted upon to do so.

I. Contrary to Its Representations, Verizon Representatives Persistently Abuse The PIC Freeze Process In Favor of Verizon Long Distance.

In Verizon's Reply Brief in this proceeding, Verizon stated:

AT&T states that "the impediments to not having a six-digit code at one's fingertips seem to vanish when the customer is seeking to switch to Verizon. These and other claims of differential processing of PIC freeze/unfreeze requests are utterly unfounded. As explained in Verizon initial comments, we do not make the six-digit code available to customers seeking to switch to toll services provided by Verizon or its affiliates, and [we] direct those customers, like all customers, to use the VRU to process freeze/unfreeze requests. Verizon New York Inc.'s Reply Comments On PIC Freeze Administration Issues, at 10 (emphasis added).¹

¹ In its December 10, 2001 Letter submitting its Compliance Plan, Verizon reiterated this statement, alleging:

"Verizon, as we have repeatedly stated, actively seeks to transfer as many freeze/unfreeze requests as possible to the VRU. . ." Compliance Plan letter at 6.

All of this is would be comforting were it true, but it is not.

In November and December 2001, AT&T began a small series of test calls. The initial purpose of the calls was to determine if an AT&T long distance customer with a PIC freeze, seeking to change its long distance carrier to Verizon, would be provided by Verizon representatives with the 6 digit customer identification number needed to use the VRU to lift the freeze. AT&T believed that Verizon representatives had access to and would release this information to complete a Verizon sale. It had not occurred to us that Verizon representatives would go further and simply ignore the presence of a PIC freeze entirely. Nor did we understand that Verizon sales representatives have the ability to simply ignore or override a valid PIC freeze whenever they want. As the data below demonstrate, we were naïve.

Three AT&T employees, including the author of this letter, participated in the test calls. Each employee resides in New York, each has Verizon as its local exchange carrier and each had, at the time of the call, AT&T for its regional and long distance carrier. Each customer also had a freeze on its toll services. In total, four calls to four Verizon representatives on four separate days were completed. These calls were recorded and transcripts of the calls were made and are provided herewith. The facts, which are evident from the transcripts, are appalling:²

- In only one of the calls did the Verizon sales representative acknowledge that there was a freeze on the line and direct the customer to the VRU system. However, when the customer stated that he did not have access to

² Underlying tape recordings are available to the Commission and Verizon upon request.

his local phone bill, the representative immediately went to her records and attempted to provide the customer with the information necessary to lift a freeze using the VRU. The transcript shows that the representative had access to the customer's billing information and was in a position to provide the relevant (but prohibited) information. The representative clearly attempted to do so. However, the account representative was so poorly trained in VRU practices that she provided the wrong information – giving the customer the telephone number and a three-digit PIN instead of the six-digit PIN needed to use the VRU. The representative never informed the customer that the only lawful way to obtain the information necessary to use the VRU was for the customer to find his own bill and locate the relevant six-digit code by himself. Nor did the representative send the customer to a three-way call to lift the freeze.

- In the three other calls, the Verizon sales representative simply took the order and sent the customer on the Third Party Verification exactly as it would for a customer that had no PIC freeze in place. In each of these three cases, the Verizon sales representative made no attempt whatsoever to lift the customer's existing freeze, even when the representative made express note during the call that there was a freeze on the number (see Fallon Transcript at 2).
- In each of these three cases, Verizon effectuated the PIC change from AT&T to Verizon long distance. That is, Verizon accepted and implemented the PIC change converting the customer's service from

AT&T to Verizon despite the fact that each account had a valid PIC freeze that was never lifted.

- Finally, to add insult to injury, in one of the cases, Verizon reestablished a PIC freeze on the customer's new Verizon long distance service without obtaining the customer's consent (See Davidow Transcript). As the Commission will remember, AT&T, Sprint and others have long accused Verizon of putting PIC freezes on customer accounts without consent and Verizon has consistently denied engaging in such conduct. This example proves that Verizon sales representatives have the ability to impose a PIC freeze without consent and will do so.

In short, and despite Verizon's repeated representations to the contrary, Verizon sales representatives can and will entirely ignore any and all aspects of the PIC freeze process, when necessary to achieve a sale of Verizon long distance service. Particularly important, Verizon has structured its systems so that Verizon sales representatives can bypass successfully every aspect of the PIC freeze process and can complete a PIC change and without following any of the lawful processes required of others to lift such freezes. No competing long distance carrier is offered that option.

The conduct of Verizon's sales representatives in each case violates Verizon's repeated promises and statements of fact to this Commission, as well as the Commission's Order of December 23, 1998, directing all carriers including Verizon to use, at least, the VRU system to lift PIC freezes and Orders of the FCC. In the first case, the sales representative attempted – in violation of Verizon promises and Commission

policy -- to give the customer the billing account information necessary to use the VRU. In the other three cases, the representative simply ignored the freeze lifting process altogether. The conduct of the Verizon representative that instituted a freeze without customer consent also violates express Commission policy. Further, this is the entire sample tested; there were no other test cases where Verizon's performance was better or more lawful. And, while the number of cases is small, it is pertinent that Verizon representatives failed to comply with the law and Verizon's promises to this Commission each and every time.

Finally, the evidence in these transcripts – the actual language of the Verizon sales representatives – demonstrates no hesitancy whatsoever about ignoring the PIC freeze process. None of the AT&T customers put pressure on the Verizon sales representatives to cut corners or ignore procedures. Indeed, even when one of the AT&T customers brought the issue of the existence of a freeze to the Verizon representative's attention (Fallon transcript), the Verizon sales representative moved blithely on to the TPV process as if without the slightest doubt that this was appropriate procedure.

The evidence here would support either a finding of deliberate anticompetitive conduct by Verizon or, at the very least, gross mismanagement. However, an additional fact would strongly support the former conclusion as against the latter. It is not merely the case that the Verizon account representatives *attempted* to complete a sale and PIC change without lifting the PIC freeze; it is the case that in each instance they *succeeded*. In each of these transactions, the AT&T PIC freeze was not lifted, yet the Verizon systems accepted and implemented the PIC change. Attached to the Davidow Transcript, for example, is the Verizon Long Distance letter of welcome to a new customer, dated

November 16, two days after the order was placed. That could happen only if Verizon had its systems programmed to accept PIC changes to Verizon long distance notwithstanding the presence of a PIC freeze.

We believe this new evidence justifies further review of Verizon's management of the entire PIC freeze process and quite possibly requires an order to show cause why sanctions should not be imposed. The evidence here shows at least that: (1) Verizon representatives selling Verizon long distance have the ability to ignore the PIC freeze process and thereby to discriminate in favor of Verizon long distance; (2) that they have the incentive to use that ability to discriminate in favor of Verizon long distance; (3) that they do, in fact, discriminate in favor of their long distance affiliate; and (4) that Verizon's promises to police itself to prevent such anticompetitive conduct cannot be trusted.³

As AT&T demonstrated in its comments earlier in this proceeding, the PIC freeze program is increasingly a hollow shell. The program does not protect against slamming any toll customer with a PIC freeze when that customer is changing from or to a local exchange carrier other than Verizon. Now we learn that the PIC freeze program also cannot be counted on to protect from slamming any customer changing from any long distance carrier (whether or not associated with a local service offering) to Verizon. That is, the PIC freeze process as it is operated today seems to protect only one class of customers, those seeking to change long distance service to an interexchange carrier other than Verizon. Conversely, the PIC freeze process as it is operated today imposes competitive burdens on all carriers other than Verizon.

³ There is, of course, a fifth fact that these transcripts demonstrate: that the presence of a PIC freeze on a long distance service will not protect a customer from being slammed by Verizon.

If that is the current status of the system, then the system must be modified or abandoned. It has failed of its primary purpose – to protect all customers seeking to use it from slamming – and it now serves almost exclusively another and patently anticompetitive purpose, the protection of Verizon long distance from bona fide competition.

II. Verizon’s XEA System Cannot and Will Not Offer Non-Discriminatory Access To PIC Freeze Status Information.

Verizon’s so-called compliance plan must be viewed in the context of these facts. And, as in these other cases, the facts remain that Verizon’s plan is not as Verizon describes it. Instead, this system is designed to continue deliberately discriminatory treatment in favor of Verizon long distance and against Verizon’s long distance competitors.

First, there is simply no justification for allowing Verizon representatives to access the customer’s service record (“CSR”) while requiring other long distance carriers to access an entirely separate system: *any* separate system. At bottom, what Verizon’s past conduct and present proposal both reveal is that, so long as Verizon can serve its long distance affiliate one way, using one system, and can serve all other long distance carriers another way, using another system, Verizon will have the ability to game the system – and to lie about it – to insure that the systems used by its long distance competitors are unfairly inferior to those used by its own long distance affiliate.

As far as we can tell, Verizon has only attempted to address one of the several serious complaints raised by AT&T and other against XEA – the requirement that CLECs

page through multiple screens to obtain PIC freeze status for each service type. Even here, however, Verizon's answer is incomplete and inadequate.

It is noteworthy that Verizon had previously claimed that XEA was not discriminatory even though it required carriers to page through multiple data screens to learn the relevant facts about a customer's PIC freeze status while Verizon long distance could look at the customer's entire PIC record on a single screen. Verizon now proposes to modify XEA so that IXCs would have PIC freeze information presented on a single screen. However, it is not clear whether Verizon's proposal is adequate even in this limited regard. Verizon is not specific as to whether the modified XEA single screen would provide freeze information on multiple lines that a customer may have, or whether IXCs would have to query each individual line one by one. If the XEA screen only contains long distance and regional toll PIC freeze information for one number at a time, then for business or residential customers with multiple lines, this process would be time consuming and cumbersome, and would require the customer to provide an IXC all of their telephone numbers during the call. This problem does not exist with CSR, which presents all information on all customer lines linked to a single screen. Hence, the proposal may still be discriminatory in this respect.

In any event, while this issue is important, it is only one of several significant problems with XEA that we have previously identified. Verizon's other proposed modifications to XEA do not address several such flaws that mar the XEA system, as described in detail in the affidavit of Dawn Russell, dated May 8, 2001. In its proposal, Verizon asserts that that users only need to log on to XEA once a day. However, as we reported previously, AT&T has repeatedly experienced delays and difficulties in logging

on to *and remaining connected to* the system. Even when AT&T representatives have been able to log onto XEA, they have periodically been locked out of the system and forced to reboot. The result is that AT&T representatives waste valuable and costly time in frustrating attempts to log onto and remain connected to a system that does not *consistently* or reliably function.

Verizon's response to AT&T's presentation of this complaint is misleading, incomplete and, in at least one respect, false. Verizon asserts that XEA is available 98.6% of the time, but does not assert that the methods for accessing it are reliable, or that it does not shut down more frequently than CSR. Here is a classic example of the combination of employing two independent systems enables Verizon to manipulate the facts to produce distorted data that permits and encourages anticompetitive conduct and discrimination.

Verizon claims that it offered to conduct a test of the XEA system and that AT&T inexplicably declined to participate. The statement is false. Verizon offered to conduct a demonstration of XEA out of one of its own locations. AT&T concluded, and informed Verizon (and staff) of the fact, that a proper test would be of XEA from a non-Verizon location or even better from several locations. AT&T offered to host just such a meeting and Verizon declined to meet anywhere except at its own facility.

Moreover, Verizon's offer of proof would be is inadequate in any event. The issue of system reliability cannot be tested at any single point in time. AT&T has never alleged that XEA never works, merely that it is inconsistent and unreliable. It is undisputed that the one time that Verizon came to an AT&T location to demonstrate the system, it failed totally. Most importantly, during this trial, the XEA system could not be

accessed for several hours by Verizon's own representatives, who were themselves unable to determine the cause for the complete inability to access the Verizon system. Thus, even with a Verizon representative and in circumstances when it is in Verizon's own interest for the XEA system to function, this system failed. Verizon has claimed that the problem must somehow have been in the AT&T operation, but neither Verizon nor AT&T have any evidence that this is true, and at the time of the test, Verizon representatives made no such claim.

Other aspects of the compliance plan are equally without merit. Verizon maintains that XEA and CSR are at parity with respect to response time. Timeliness and accuracy are essential in making available to IXC's PIC freeze information on the same or equivalent basis that this information is available to Verizon's long distance personnel. However, AT&T's recent experiences with XEA confirm AT&T's previous experience: XEA lags significantly behind CSR in terms of being updated, sometimes by as much as several days. This lag means that the information on XEA is significantly less timely and as a result, significantly less accurate than information accessed through the CSR. AT&T's representatives who use XEA routinely find that XEA does not reflect in a timely manner updates on customer transactions.

Verizon concedes that freeze/unfreeze orders that are submitted through Verizon's representatives will generally be available to Verizon's representatives in CSR sooner than they would be available through XEA. This discrepancy alone underscores the fact that XEA is not equivalent to CSR and that Verizon representatives would have access to more current information than IXCs who would be forced to use the inferior XEA system. That Verizon claims that XEA is updated sooner than CSR when the

customer uses the voice response unit (“VRU”) to process freeze/unfreeze requests is irrelevant because CSR remains superior to XEA for orders placed through Verizon’s representatives, which is, at minimum, a large and, at maximum, a preponderance of the relevant cases.⁴

Verizon also acknowledges that XEA is not available at times when access to the CSR is, and defends this patent inconsistency by arguing that it does not matter that CSR is available on weekends when XEA is not because, as of today, Verizon elects not to market on Sundays. Verizon makes no promise about tomorrow.

In short, Verizon hasn’t even begun to make the case that access to PIC freeze information on XEA is or will remain at parity with the access that Verizon offers its long distance business via CSR.

The Commission ordered Verizon to “afford carriers the most nearly equivalent access” to PIC freeze information that is available. Patently the “most nearly equivalent access” is access to the same system that Verizon representatives use: access to the customer service record.

AT&T’s local service operations, which already have access to CSR, have found that CSR is generally accurate, reliable and easy to use. Moreover and in extremely stark contrast to the current debate, there exists an established system of metrics and standards measuring, on a continuous basis, whether CLECs are obtaining access to CSR records on a parity basis with Verizon itself. In contrast, there do not exist, and Verizon has not

⁴ Verizon uses its proposal to promote its VRU system as an efficient means of handling PIC freeze information. As discussed in AT&T’s comments to the Commission dated May 8, 2001, the VRU system can be used in an anticompetitive manner against IXC’s. Use of the VRU requires additional effort on the part of the customer, including use of a six digit code from the Verizon local bill that the customer may be unable to locate. At this time, a three way call with Verizon and the IXC remains the preferred means of lifting the PIC freeze instead of the VRU because a call eliminates the uncertainty of whether the customer followed up to lift the freeze or was able to find the six digit code.

proposed to create, any metrics or performance reports that will continuously monitor whether Verizon is discriminating against its long distance competitors in making available information on PIC freeze status.

Instead of continuous litigation, testing and arguing over how to bring XEA up to the same standards as CSR, the more sensible approach is to give IXC's access to freeze information through CSR, because it is undisputed that this information is the same as what Verizon representatives see.

Verizon states that allowing other IXC's to use CSR the way Verizon long distance uses it could raise response time and stability issues. Hence, Verizon proposes that CSR should be left free to handle only: (1) CLEC transactions and (2) the transactions of Verizon long distance. This borders on the silly, and demonstrates as much as any argument can how desperate Verizon is to preserve for its long distance affiliate its unique access to the CSR. If Verizon believed this argument, and also believed that XEA was truly a parity offering, it would protect the CLEC and Verizon local processes by moving Verizon long distance over onto the same XEA system that it insists over IXC's use. Indeed, by bringing up potential problems of CSR response and stability, Verizon shifts the focus from the real issues at hand: the existing problems of response time and stability of XEA. AT&T's understanding is that XEA was not designed to handle either the type or the volume of inquiries which Verizon now proposes -- XEA was created to be a tool for support of PIC changes for small carriers with no customer account record exchange ("CARE") system and was supposed to replace both the paper CARE processes used by small carriers, and telephone calls these small carriers made to Verizon representatives regarding PIC changes Verizon appears

willing to take steps to modify the XEA system and screens, and extensively expand its original capabilities as a means of complying with the Commission's order, yet Verizon is unwilling to open access to CSR for IXC's, which requires no modifications and would satisfy without question the Commission's requirement to provide PIC freeze information on an equivalent basis.

Verizon also states in its proposal that allowing IXC's access to CSR would raise CPNI concerns and would provide IXC's with more access than is necessary for fulfilling toll transactions. This, too is silly, and for the same reasons: the problems that Verizon claims would exist for other IXC's should apply equally to Verizon long distance, yet Verizon doesn't see fit to apply the same concerns when it is the long distance carrier. AT&T again emphasizes that CSR would only provide the same information to which Verizon representatives currently have access when engaging in stand alone long distance transactions, no more and no less. The transcripts attached to this pleading demonstrate the point. Although these calls were made solely to Verizon long distance (see Davidow transcript at 1), and although each customer expressly stated that he or she sought solely to change long distance service, the Verizon representative asked for, received customer permission to look at, and did look at the customer's entire CSR record.

Verizon long distance has no entitlement to access to customer service records under the CPNI rules different from or beyond that of other interexchange carriers. In this filing it claims precisely such a discriminatory right.⁵

⁵ AT&T does not suggest that Verizon long distance did anything wrong or in violation of any know CPNI rule when, in these four cases, its representatives accessed customer records in the CSR. AT&T long distance, however, would access and use the information in precisely the same way. AT&T would not use customer information for any purpose other than facilitating the completion of the order and there would be no use of such information to cross-sell other services. As part of the call with the customer, AT&T would request the customer's confirmation that AT&T would access his or her information for the sole purpose of completing the order. In short, this is business as usual for all firms.

Finally, Verizon promises in the near future that it will impose non-cost based charges on IXCs for using the XEA system. Verizon's astonishing justification is that Verizon long distance, is paying for services from Verizon local and that it should be possible to calculate what proportion of those administrative expenses can be attributed to XEA. This argument is ludicrous for at least two obvious reasons. First, Verizon long distance doesn't use XEA to access PIC freeze information, it uses CSR and ICRIS. Indeed, there is no evidence that Verizon long distance uses XEA for any purpose whatsoever. Second, as this Commission has held repeatedly, the proper cost for pricing of wholesale services is incremental cost. There are already clearly established cost based rates for accessing the CSR, and AT&T does not oppose paying them for this purpose.

Conclusion

The PIC freeze process is at present the single most persistently and blatantly anticompetitive device employed by Verizon in the long distance market. The most recent evidence contained in this filing confirms this beyond cavil. The system exists now almost exclusively because Verizon can and will manipulate to frustrate tens of thousands of customer attempts to change long distance carrier. The Commission should consider doing away with the system entirely since, simultaneous with its increased anticompetitive impact there has been a decrease in bona fide value to consumers. If the Commission does not do away with it, it must begin the process of taking it out of Verizon's hands.

In the interim, the Commission must enforce the greatest degree of parity in offering customers efficient procedures both for putting PIC freezes in place and for

lifting them, as it can. Allowing IXCs access to the same CSR records as Verizon long distance views will certainly help. Moreover, once that is accomplished, we believe that intelligent experiments can be conducted to explore new and non-discriminatory ways protecting consumers against slamming. We look forward to working with the Commission in this regard.

Very truly yours,

Attachments

cc: Eugene Connell
Elizabeth Liebschutz
Daniel Martin
Peter McGowan
Maureen McCauley
Mary Monaco
Eleanor Stein